

## Securities and Exchange Commission

## § 210.3-01

the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(f)).

[68 FR 4872, Jan. 30, 2003]

### § 210.2-07 Communication with audit committees.

(a) Each registered public accounting firm that performs for an audit client that is an issuer (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(f))), other than an issuer that is an Asset-Backed Issuer as defined in § 240.13a-14(g) and § 240.15d-14(g) of this chapter, or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than a unit investment trust as defined by section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4(2)), any audit required under the securities laws shall report, prior to the filing of such audit report with the Commission (or in the case of a registered investment company, annually, and if the annual communication is not within 90 days prior to the filing, provide an update, in the 90 day period prior to the filing, of any changes to the previously reported information), to the audit committee of the issuer or registered investment company:

(1) All critical accounting policies and practices to be used;

(2) All alternative treatments within Generally Accepted Accounting Principles for policies and practices related to material items that have been discussed with management of the issuer or registered investment company, including:

(i) Ramifications of the use of such alternative disclosures and treatments; and

(ii) The treatment preferred by the registered public accounting firm;

(3) Other material written communications between the registered public accounting firm and the management of the issuer or registered investment company, such as any management letter or schedule of unadjusted differences;

(4) If the audit client is an investment company, all non-audit services provided to any entity in an investment company complex, as defined in § 210.2-01 (f)(14), that were not pre-approved by the registered investment

company's audit committee pursuant to § 210.2-01 (c)(7).

(b) [Reserved]

[68 FR 6048, Feb. 5, 2003]

EFFECTIVE DATE NOTE: At 68 FR 6048, Feb. 5, 2003, § 210.2-07 was added, effective May 6, 2003.

### GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

SOURCE: Sections 210.3-01 to 210.3-16 appear at 45 FR 63687, Sept. 25, 1980, unless otherwise noted.

NOTE: These instructions specify the balance sheets and statements of income and cash flows to be included in disclosure documents prepared in accordance with Regulation S-X. Other portions of Regulation S-X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedules to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to § 230.411(b) regarding incorporation by reference to financial statements and to section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to § 240.12b-23 regarding incorporation by reference and § 240.12b-36 regarding use of financial statements filed under other acts.

[45 FR 63687, Sept. 25, 1980, as amended at 57 FR 45292, Oct. 1, 1992]

### § 210.3-01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years. If the registrant has been in existence for less than one fiscal year, there shall be filed an audited balance sheet as of a date within 135 days of the date of filing the registration statement.

(b) If the filing, other than a filing on Form 10-K and Form 10-KSB or Form 10 and Form 10-SB, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet as of an interim date at least as current

as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) is also applicable to filings, other than on Form 10-K and Form 10-KSB or Form 10 and Form 10-SB, made after 45 days but within the number of days of the end of the registrant's fiscal year specified in paragraph (i) of this section: *Provided*, That the following conditions are met:

(1) The registrant files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports due have been filed;

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income, after taxes by before extraordinary items and cumulative effect of a change in accounting principle.

(d) For filings made after 45 days but within the number of days of the end of the registrant's fiscal year specified in paragraph (i) of this section where the conditions set forth in paragraph (c) of this section are not met, the filing must include the audited balance sheets required by paragraph (a) of this section.

(e) For filings made after the number of days specified in paragraph (i) of this section, the filing shall also include a balance sheet as of an interim date within the following number of days of the date of filing:

(1) For accelerated filers (as defined in §240.12b-2 of this chapter):

(i) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(ii) 130 days for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(iii) 125 days for fiscal years ending on or after December 15, 2005; and

(2) 135 days for all other registrants.

(f) Any interim balance sheet provided in accordance with the require-

ments of this section may be unaudited and need not be presented in greater detail than is required by §210.10-01. Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10-Q and Form 10-QSB.

(g) For filings by registered management investment companies, the requirements of §210.3-18 shall apply in lieu of the requirements of this section.

(h) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by Item 8.A of Form 20-F (§249.220 of this chapter) in lieu of the financial statements specified in this rule.

(i)(1) For purposes of paragraph (c) and (d) of this section, the number of days shall be:

(i) For accelerated filers (as defined in §240.12b-2 of this chapter):

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) 90 days for all other registrants.

(2) For purposes of paragraph (e) of this section, the number of days shall be:

(i) For accelerated filers (as defined in §240.12b-2 of this chapter):

(A) 134 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2005; and

(ii) 134 days subsequent to the end of the registrant's most recent fiscal year for all other registrants.

[45 FR 63687, Sept. 25, 1980, as amended at 46 FR 12491, Feb. 17, 1981; 46 FR 36124, July 14, 1981; 50 FR 49531, Dec. 3, 1985; 56 FR 30053, July 1, 1991; 64 FR 53908, Oct. 5, 1999; 67 FR 58503, Sept. 16, 2002]

**§ 210.3-02 Consolidated statements of income and changes in financial positions.**

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed or such shorter period as the registrant (including predecessors) has been in existence.

(b) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be provided. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by § 210.10-01.

(c) For filings by registered management investment companies, the requirements of § 210.3-18 shall apply in lieu of the requirements of this section.

(d) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by Item 8.A of Form 20-F (§ 249.220 of this chapter) in lieu of the financial statements specified in this rule.

[45 FR 63687, Sept. 25, 1980, as amended at 46 FR 12491, Feb. 17, 1981; 46 FR 36125, July 14, 1981; 50 FR 49531, Dec. 3, 1985; 56 FR 30053, July 1, 1991; 57 FR 45292, Oct. 1, 1992; 64 FR 53908, Oct. 5, 1999]

**§ 210.3-03 Instructions to income statement requirements.**

(a) The statements required shall be prepared in compliance with the applicable requirements of this regulation.

(b) If the registrant is engaged primarily (1) in the generation, transmission or distribution of electricity,

the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or (2) in holding securities of companies engaged in such businesses, it may at its option include statements of income and cash flows (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the statements of income and cash flows for the interim periods specified.

(c) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled as to sales or revenues and net income in the statement or in a note thereto with the amounts previously reported: *Provided, however*, That such reconciliations need not be made (1) if they have been made in filings with the Commission in prior years or (2) the financial statements which are being retroactively adjusted have not previously been filed with the Commission or otherwise made public.

(d) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(e) Disclosures regarding segments required by generally accepted accounting principles shall be provided for each year for which an audited statement of income is provided. To the extent that the segment information presented pursuant to this instruction complies with the provisions